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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,516	02/19/2002	Yoshihisa Yonezawa	YONE3009/EM	3425
23364	7590	11/18/2004	EXAMINER	
BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			DONG, DALEI	
			ART UNIT	PAPER NUMBER
			2879	

DATE MAILED: 11/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/076,516

Applicant(s)

YONEZAWA ET AL.

Examiner

Dalei Dong

Art Unit

2879

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 October 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-17 and 25-33.Claim(s) withdrawn from consideration: 18-24.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Joseph Williams
Ryzhikov

[Signature]

Continuation of 5. does NOT place the application in condition for allowance because: the argument provided by the Applicant deemed not persuasive. In response to Applicant's argument that the amendment to claim 1 did not necessitate the application of entirely new references to claims 7 and 26-27, or the new rejection of claims 1-6, 8-17 and 28-33; Examiner asserts that the amendment to independent claims 1 and 5, raises new issue and changes the scope of the claim and thus requires a new search, and the Examiner asserts that the Final Rejection is proper.

In response to Applicant's argument regarding to claims 1-6, 8-17, 25 and 28-33, that member 13a is not a metal film formed on base 11a, much less one formed on the base in such a manner that the bottom of the film is in direct contact with the base; Examiner asserts that the Examiner interprets at least one metal film claimed by the Applicant as to be element 13a as well as the vertical portion extending on top of the base member 11a. Also, according to the definition of "on" it is merely used to indicate position above and supported by or in contact with, therefore Examiner asserts that "at least one metal film" of the Wada reference which comprises of element 13a as well as the vertical portion extending on top of the base member 11a is formed "on" the base member, thus Examiner asserts that the Wada reference is valid and maintains the rejection.

Further, in response to Applicant's argument that forming portion 12a at the end of portion 13a is not the same as welding portion 12a to 13a, with linear member 2a held in between, Examiner asserts that the method of forming a device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not given patentable weight.

Finally, in response to Applicant's argument that the Wada reference lacks the advantages of the present claimed invention, Examiner asserts that the advantages of the present claimed invention is merely a function and the employment of the device and it has not bearing on the structural limitations of the claimed invention and it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Also, in response to Applicant's argument regarding to claim 7, that the prior art of record fails to teach or suggest the claimed invention, Examiner asserts that the prior art of record are valid and teaches the claimed invention.

Finally, in response to Applicant's argument regarding to claims 26 and 27, that the prior art of record fails to teach or suggest the claimed invention, Examiner asserts that the prior art of record are valid and teaches the claimed invention.



Joseph William
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